

- (1) Whether claimant is entitled to receive temporary total disability benefits.
- (2) Whether claimant sustained an accidental injury on June 3, 1993.
- (3) Whether claimant should be referred for vocational rehabilitation assessment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The Appeals Board does not have the jurisdiction and authority until time of final award to review the issues presented by claimant in this appeal. Therefore, the preliminary hearing Order dated September 22, 1997, entered by Administrative Law Judge Kenneth S. Johnson should remain in full force and effect.

(1) K.S.A. 44-534a, as amended, limits Appeals Board review of preliminary hearings to the following issues:

- (1) Whether claimant has sustained an accidental injury.
- (2) Whether the injury arose out of and in the course of employment.
- (3) Whether notice and claim were timely made.
- (4) Whether certain defenses apply.

The question whether claimant is temporarily and totally disabled is not one of the issues enumerated in K.S.A. 44-534a, as amended, which the Appeals Board may review from a preliminary hearing. Further, the Appeals Board lacks the jurisdiction and authority at this stage of the proceeding to reweigh the evidence to determine if claimant is temporarily and totally disabled under K.S.A. 44-551, as amended, as it was within the Administrative Law Judge's authority to make that determination.

(2) Claimant has filed two proceedings. The first, Docket No. 220,182, alleges a series of mini-traumas through January 17, 1996, culminating in injuries to the shoulders and neck. The second, Docket No. 220,242, alleges a series of mini-traumas through June 3, 1993, culminating in injuries to the shoulders and back.

For the same reasons expressed above, the Appeals Board lacks jurisdiction at this stage of the proceeding to review the Administrative Law Judge's determination of the appropriate date of accident for the period of injury in question.

(3) Because the Administrative Law Judge found claimant's date of accident was claimant's last day of work for the respondent on January 17, 1996, the Judge denied claimant's request for vocational rehabilitation assessment. Pursuant to K.S.A. 44-510g, no vocational assessment may be ordered unless the respondent or its insurance carrier consent, which they have not. The Administrative Law Judge did not exceed his jurisdiction and authority in denying the request for vocational rehabilitation assessment. Therefore, that denial may not be reviewed at this stage of the proceeding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's Application for Review should be, and hereby is, dismissed; that the preliminary hearing Order dated September 22, 1997, entered by Administrative Law Judge Kenneth S. Johnson remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS
Kerry E. McQueen, Liberal, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director